

Peter J. Viteznik, OSB No. 944540

pviteznik@kilmerlaw.com

Robert B. Miller, OSB No. 960068

bobmiller@kilmerlaw.com

KILMER, VOORHEES & LAURICK, P.C.

732 N.W. 19th Avenue

Portland, Oregon 97209-1302

Telephone: (503) 224-0055

Fax: (503) 222-5290

Attorneys for Defendants

Terrence Thurber, Thomas Thurber,

DG Rollins Mining, LLC and

Columbia Gorge Data Center, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RAYMOND BALL, an individual;
and JOSEPH TOTH, an individual,

Plaintiffs,

vs.

MATTHEW CARSON, an individual;
WILLIAM CARSON, an individual;
TERRANCE THURBER, an individual;
THOMAS THURBER, an individual;
DG ROLLINS MINING, LLC, a Wyoming
limited liability company;
COLUMBIA GORGE DATA CENTER, LLC,
a Nevada limited liability company;
WHC & SWC INVESTMENTS, LTD,
a Texas limited partnership;
INTELLIGENT INVESTMENTS, LLC,
a Texas limited liability company; and
SNICKERS #1, LLC,
a Texas limited liability company,

Defendants.

Case No. 3:19-cv-00242-HZ

**DECLARATION OF ROBERT B.
MILLER IN SUPPORT OF RESPONSE
IN OPPOSITION TO PLAINTIFFS'
MOTION TO EXTEND DISCOVERY
DEADLINES BY DEFENDANTS
TERRENCE THURBER, THOMAS
THURBER, DG ROLLINS MINING, LLC,
AND COLUMBIA GORGE DATA
CENTER, LLC**

I, Robert B. Miller, under penalty of perjury, declare as follows:

1. I am counsel for Defendants Thomas Thurber, Terrence Thurber, DG Rollins Mining, LLC, and Columbia Gorge Data Center, LLC, and make this declaration based on my personal knowledge and in support of Defendants' Response in Opposition to Plaintiffs' Motion to Extend Discovery Deadlines.

2. Plaintiffs' counsel first contacted me about this request to extend discovery deadlines in a telephone call on Friday, March 13, 2020. I responded in writing on Tuesday, March 17, with the analysis of Defendants' opposition and of Plaintiffs' failure to raise a basis for good cause under F.R.C.P. 16(b)(4) and LR 16-3(a)(1) and (2). [Exhibit 1]

3. Plaintiffs contend the COVID-19 pandemic precludes depositions Plaintiffs have not requested. Plaintiffs never requested any depositions and Defendants have not refused to agree to dates.

4. Plaintiffs initiated no discovery before serving a Request for Production on February 14, 2020. Defendants served a response and responsive documents 28 days later, on March 13. Later that same day, Plaintiffs served interrogatories and requests for admissions on the Defendants. The Requests for Production, Requests for Admissions, and Interrogatories all refer to allegations in the Complaint Plaintiffs filed on February 18, 2019. Plaintiffs' discovery requests do not refer to evidence or information developed through discovery after the Complaint or based on activity initiated after the Complaint was filed.

5. Plaintiffs sent their first settlement demand letter on October 22, 2019, five weeks after the Court entered the September 13 Scheduling Order. I gave Plaintiffs' counsel Defendants' response in a phone call followed by a substantive email on November 1. On November 20, counsel for the parties agreed to a second conference on December 3. In that conference I advised Plaintiffs' counsel that we were at an impasse. No further settlement discussions followed. There was no more activity in this case until Interrogatories were served on February 14, 2020.

6. Attached as Exhibit 1 are true and correct copies of my March 17, 2020 email to Plaintiffs' counsel, and the appended September 11, 2019 email from Plaintiffs' counsel to the Court and counsel with the parties' joint proposed schedule.

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT AND ARE SUBJECT TO PENALTY FOR PERJURY.

KILMER VOORHEES & LAURICK, P.C.

/s/ Robert B. Miller

Robert B. Miller, OSB No. 960068

bobmiller@kilmerlaw.com

Attorneys for Defendants Terrence Thurber,
Thomas Thurber, DG Rollins Mining, LLC
and Columbia Gorge Data Center, LLC

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